

**IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 25TH DAY
OF NOVEMBER, 2022, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/73/22

SIMON YAO BLASU ----- PETITIONER

VRS.

BENEDICTA PEACE EPTON ----- RESPONDENT

PARTIES ABSENT

STEVE GREY, ESQ. FOR THE PETITIONER PRESENT

JUDGMENT

FACTS:

The parties herein got married under **Part III of the Marriages Act (1884-1985), Cap 127** on 16th November, 2019 at the Good Shepherd Catholic Church, Community 2, Tema. Thereafter, the parties cohabited at Community 3, Tema. There are no issues to the marriage. The petitioner is currently on a temporal engagement with the National Identification Authority whilst the respondent is unemployed. There has not been any previous proceedings brought before this or any other Court in respect of this marriage. On 10th May, 2022, the petitioner filed the instant petition for annulment of the marriage celebrated between himself and the respondent alleging that the respondent has willfully refused to consummate the marriage and prayed the court for the following reliefs;

- a. That the marriage between the petitioner and the respondent celebrated on 16th November, 2019 be voided by a decree of nullity due to the willful refusal of the respondent to have the said marriage consummated

b. That there should be no order as to costs.

The petitioner avers that there is no communication between the parties and the parties have not had sex since the marriage was celebrated because the respondent has willfully refused to have the marriage consummated. The petitioner avers that anytime he drew closer to the respondent in an attempt to have sexual intercourse with her, she always complained of ill-health, citing pains in the stomach, legs, headache and general bodily pains as an excuse not to have sexual intercourse with him. The petitioner states that he reported the behaviour of the respondent to her parents but their intervention has not yielded any results. Again, the intervention of the pastors of the church could not help resolve the issues.

Additionally, the petitioner states that without any provocation, the respondent packed some of her belongings in December 2020 and went to live in her parents' house. In July, 2021, the respondent returned for some of her items and on 19th October, 2021, she came for her remaining items and has now finally vacated the matrimonial home. The petitioner further avers that as at December 2020 when the respondent moved out of the matrimonial home, she had willfully refused to have sex with the petitioner for the marriage to be consummated. According to the petitioner, his marriage to the respondent has been one of anguish, discomfort, unpleasantness as well as psychological, mental and emotional stress. It is now clear that the differences between the parties are irreconcilable and that the parties are grossly incompatible for which reason petitioner cannot reasonably be expected to live with the respondent as husband and wife any more.

The petition for annulment, the notice of setting down for trial, hearing notices and all processes filed in the suit were duly served on the respondent but he failed to appear in court to defend the petition or to participate in the

trial. The court granted leave to petitioner to lead evidence to prove the allegation contained in the petition.

LEGAL ISSUE

Whether or not the respondent has willfully refused to consummate the marriage celebrated between the parties.

ANALYSIS

Under **section 13(1) of the Matrimonial Causes Act, 1971(Act 367)**, a person may present a petition to the Court for a decree of nullity for annulling a marriage on the ground that it is by law void or voidable. **Section 13(2)** further states some of the circumstances under which a marriage will be deemed void or voidable in the following terms;

“(2) In addition to any other grounds on which a marriage is by law void or voidable, a marriage is voidable, subject to subsection (3), on the ground

- (a) That the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or*
- (b) That at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or*
- (c) That the respondent was at the time of the marriage pregnant by some person other than the petitioner; or*
- (d) That the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.”*

The petitioner in the instant petition for annulment relies on **section (13)(2)(a)** to contend that the Ordinance marriage celebrated between himself and the respondent has not been consummated owing to the willful refusal of the respondent to consummate it.

The principle of law is that he who alleges must prove and the balance of proof is on a preponderance of probabilities only. Thus, the petitioner bears the burden to prove that there has been no sexual intercourse between the parties after the marriage and secondly that the refusal on the part of the respondent to consummate the marriage is without just cause.

LexisNexis Glossary defines consummation as:

"The first act of sexual intercourse between a couple following their marriage. A marriage can be rendered null and void if it has not been consummated whether as a result of one party's wilful refusal to consummate or inability to do so."

In the case of **Horton v. Horton** [1947]2 All E.R at 871, Lord Leweitt defined the term "wilful refusal" in the following terms;

"The word connote, I think, a settled and definite decision come to without just excuse, and, in determining whether there has been such a refusal, the judge should have regard to the whole history of the marriage"

Also, in the case of **Dickinson v. Dickson** [1913] p.198 the term wilful refusal was defined as follows:

" By willful refusal I do not mean a mere temporary unwillingness due to a passing phase, or the result of coyness a feeling of delicacy, affected or real, or nervous ignorance, care and kindness, but wilful, determined and steadfast refusal to perform the obligations and to carry out the duties which the marriage contract involves"

To prove his case, the petitioner testified that he got married under the Ordinance at the Good Shepherd Catholic Church, Community 2, Tema to the respondent on 16th November, 2019. According to his testimony, after the marriage, they cohabited at Community 3, Tema. According to him, the

marriage has broken down beyond reconciliation since the parties have never had sex after the marriage due to the wilful refusal of the respondent to have the marriage consummated. The petitioner further testified that when he lived together with the respondent under one roof, anytime he made attempts at having sexual intercourse with the respondent, she would give excuses like ill health, general bodily pains and stomach and legs pains.

The petitioner continues to say that he reported the conduct of the respondent to their parents and pastors but all attempts at reconciliation have proved futile. Consequently, in December, 2020, without provocation, the respondent packed some of her belongings out of the matrimonial home to her parents' house and finally moved out on 19th October, 2021 without just cause. According to him, as at December, 2020, when the respondent moved out of the matrimonial home, she had willfully refused to have sex with him for the marriage to be consummated. The petitioner contends that the events in the marriage have been one of anguish, discomfort, unpleasantness as well as psychological, mental and emotional stress.

The petition and all processes in the suit were duly served on the respondent but she failed to enter appearance and to defend the suit. In the case of the **Republic v. High Court (Fast Track Division), Accra Ex-parte State Housing Company Limited (No. 2)** [2009] SCGLR 185 at 190, the Supreme Court per Georgina Wood, C.J held that:

"A party who disenables himself or herself from being heard in any proceeding cannot turn round and accuse an adjudicator of having breached the rules of natural justice".

The evidence of the petitioner regarding the wilful refusal of the respondent to have sexual intercourse after the marriage remains unchallenged. The respondent failed to disprove the evidence of the petitioner regarding the

willfulness and as such her decision not have sexual intercourse with the respondent after the marriage to consummate is nothing short of wilful. The importance of marriage sex in a marriage cannot be gainsaid. There is a dearth of authorities on wilful refusal to consummate a marriage in Ghana but the courts have had the occasion to pronounce on the importance of sexual intercourse not only immediately after the marriage but also throughout the marriage. In the case of **Opoku-Owusu v. Opoku-Owusu** [1973] 2 GLR 349-354 at page 351 the court held that:

“The mutual right to intercourse after the marriage has been consummated continues during marriage but this right must be reasonably exercised. One spouse is not bound to submit to the demands of the other if they are unreasonable and inordinate or are likely to lead to a breakdown in health. On the other hand a wilful refusal by one spouse to have sexual intercourse may entitle the party suffering to leave if in all the circumstances of the case it can properly be “regarded as grave and weighty and if it has adverse effect on the health of the other spouse.”...I think it is right to say that the spouse who suffers as a result of an unreasonable insistence on sexual intercourse will be entitled to leave the other.”

It is strange that the parties, who married in the Catholic Church and who I presume were taking through counseling where the importance of sexual intercourse would have been underscored would refuse to have sexual intercourse with the respondent without just cause. It was incumbent on the respondent who is being accused of willfully refusing to have sexual intercourse to have shown that the refusal was not wilful but as result a medical or other ground for the refusal.

On the totality of the evidence led, I hold that the refusal of the respondent to have sexual intercourse with the respondent is without just and that her decision not to have sex with the respondent after the marriage is wilful.

CONCLUSION

In conclusion, I hold that the marriage between the petitioner and the respondent is void owing to the wilful refusal of the respondent to consummate the marriage. Accordingly, judgment is entered in favour of the petitioner against the respondent in the following terms;

1. I hereby grant a decree of nullity for the annulment of the marriage celebrated between the petitioner and the respondent on 16th November, 2019, at the Good Shepherd Catholic Church, Community 2, Tema.
2. The petitioner shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. There shall be no order as to costs.

(SGD)

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)